

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

State of Rajasthan & anr. Vs. V.Indira Devi & ors.

S.B.CIVIL MISC. APPEAL NO.44/1993

Against the award dated 19.09.1989
made by the Motor Accidents Claims
Tribunal, Sriganganagar in Claims
Case No.218/1988

Date of Judgment : 18th August 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.L.Bhati, Addl. Government Advocate for the appellants
Mr.Tarun Joshi for the claimant-respondents No.1 to 4

BY THE COURT:

This appeal against the award dated 19.09.1989 made by the Motor Accidents Claims Tribunal, Sriganganagar in Claims Case No.218/1988 has been submitted by the owners of the vehicle involved in the accident assailing the award on its findings on the liability of the driver towards accident and so also on its quantification of compensation; and the claimants have submitted cross-objections hereto seeking enhancement over the amount of compensation awarded by the Tribunal.

Dr. V.Venkappa, M.E., Ph.D., 43 years in age and working as Reader in the Department of Structural

Engineering in Malviya Regional Engineering College, Jaipur, while accompanying a Team of Public Health Engineering Department of Government of Rajasthan going to Srikanpur for soil testing; and traveling in their vehicle bearing registration No. RRC 4042 met with his untimely end at about 10.00 p.m. on 25.06.1985 near village 49F on Gajsinghpur to Srikanpur road when the vehicle capsized and he sustained grievous injuries. The wife and three minor children of the deceased claimed compensation against the owner and driver of the vehicle in the sum of Rs.9,05,000/- before the Motor Accidents Claims Tribunal, Sriganganagar for the loss occasioned to them for the accidental death of Dr. V.Venkappa. The non-applicants contested the claim with the submissions, inter alia, that it were an unfortunate accident resulting in untimely death of Dr. Venkappa; that near village 49F an unknown vehicle hit the government vehicle in the darkness of night; that the wheel of the government vehicle was severed and the vehicle capsized and the deceased was thrown out and he was crushed beneath the vehicle and that there was no fault or negligence on the part of vehicle driver; that financial assistance has been extended to the dependents of the deceased and his wife has been accorded compassionate appointment on the post of Lower Division Clerk; and gratuity and GPF amount have also been paid and,

therefore, they were not entitled to claim any further compensation.

On the pleadings of the parties, following issues were framed:-

- “1. क्या विपक्षी बलदेवसिंह ने राज0 सरकार के नियोजन में होते हुए, उसी प्रयोजन में दुर्घटना के समय वाहन सं. RRC 4042 को निहायत उतावलेपन व लापरवाही से चला कर डा0 वी0 वैकप्पा को दुर्घटनाग्रस्त कर मृत्यु कारित की ?
2. क्या ऐसे दावे (क्लेम) के माफिक प्रार्थीगण ऐसी क्षतिपूर्ति की राशि पा सकते हैं ? यदि हां तो कौन-2, कितनी-2 राशि, किस-2 से और किस प्रकार पा सकता है ?
3. क्या माफिक पैरा ब जवाब मु0 इन्दिरादेवी प्रार्थिया के राज्य सेवा में होकर वेतन प्राप्त करते होने व मृतक को देय लाभों की राशि प्राप्ति के उपरान्त ऐसी राशि अप्रार्थीगण भुगतान करने को बाध्य नहीं हैं ?
4. अन्य अनुतोष, कोई हो तो ?”

In oral evidence, the claimants examined V. Indra Devi, claimant No.1, wife of deceased as AW-1, Chiranjilal Sharma, Technical Assistant, Malviya Engineering College and a co-passenger in the vehicle at the time of accident as AW-2, Vimal Kumar Goswami, UDC, Malviya Engineering College in relation to the emoluments of the deceased as AW-3 and Dr.Mahaveer Prasad Agarwal, a Member of the Medical Board performing post-mortem as AW-4. The non-applicants examined Baldeo Singh driver of the vehicle involved in the

accident as NAW-1, Sukhvinder Singh, the then Junior Engineer, PHED, Gajsinghpur, another occupant of the vehicle as NAW-2, Harbhajan Singh, Police Constable who carried out mechanical inspection of the vehicle as NAW-3, Diwan Chand Sindhi, photographer as NAW-4, Kashi Ram Vishnoi, the then Station House Officer, Police Station, Srikanpur who inspected the site and prepared site inspection report as NAW-5, Triloki Nath, the then ASI, Police Station, Srikanpur, the Investigating Officer as NAW-6. The parties also produced relevant documentary evidence.

After hearing the parties finally and after examining the entire evidence on record, on issue No.1 the learned Judge of the Tribunal found material contradictions in the statements of the witnesses of the non-applicants and the facts that,-

- “1) जयपुर से चलते समय जीप करीब 70 किलोमीटर प्रति घन्टा की रफ्तार से जीप चालक जीप चला रहा था ।
- 2) सीकर व रावतसर के बीच इस जीप की रफ्तार कुछ कम रही क्योंकि जीप की कमानी टूटी हुई थी ।
- 3) जीप सड़क पर आने वाली किस चीज से टकराई थी ।
- 4) दुर्घटना के तुरन्त बाद जीप चालक मौके से भाग गया था ।”

The learned Judge also commented in relation to the statement of the driver of the vehicle Baldeo Singh thus:

“इस सन्दर्भ में गवाह बलदेवसिंह निम्न कारणों से विश्वसनीय नहीं हैं:-

- 1) उसका कहना है कि जयपुर से जब चले तो रास्ते में गाड़ी खराब नहीं हुई जबकि जीप से आ रहे अन्य दो व्यक्ति चिरन्जीलाल व सुखमिन्दरसिंह का कहना है कि रास्ते में जीप खराब हुई थी और उसे ठीक करवाया था ।
- 2) गवाह बलदेवसिंह का कहना है कि वह घटनास्थल से नहीं भागा था जबकि गवाह चिरन्जीलाल का बयान है कि जीप चालक घटनास्थल से भाग गया था और प्रथम सूचना रिपोर्ट में भी जीप चालक के घटनास्थल से भागने का अभिकथन है जो घटना के तुरन्त एक घन्टे बाद दर्ज कराई गई ।
- 3) बलदेवसिंह का कहना है कि सामने से जो वाहन आ रहा था, उसकी लाईट बुझी हुई थी लेकिन सुखमिन्दरसिंह का बयान है कि लाईट जल रही थी ।
- 4) बलदेवसिंह का कहना है कि वाहन की स्पीड उस समय करीब 40 किलोमीटर प्रतिघन्टा की थी लेकिन सुखमिन्दरसिंह का कहना है कि उसकी स्पीड 50 किलोमीटर प्रति घन्टा थी ।”

On an overall comprehension of the evidence, learned Judge observed that the driver was definitely responsible for the accident and even if the other unknown vehicle was equally responsible, yet the responsibility of the driver of the vehicle in question cannot be ignored and the non-applicants remain liable for the loss occasioned to the claimants.

Taking up quantification of compensation in issue Nos.2 and 3, the learned Judge rejected the contention for adjustment of the amount of gratuity and GPF into the

compensation amount but of course, considered that the wife of the deceased having been accorded compassionate appointment and her getting salary of Rs.860/- per month, a part thereof was required to be adjusted in calculation of loss of dependency. The learned Judge found proved the salary income of the deceased at Rs.2,689/- but discarded the claim of the future enhancement on promotion being an uncertain prospect and deducted Rs.689/- on the personal expenditure of the deceased and further Rs.500/- for the income earned by the wife of the deceased for compassionate appointment and, therefore, adopted the multiplicand of Rs.18,000/- per annum at the rate of Rs.1,500/- per month; then considered it appropriate to apply a multiplier of 12; and in that manner, arrived at a figure of pecuniary loss of Rs.2,16,000/-. Learned Judge declined to award any amount towards non-pecuniary loss and funeral expenses and deducting Rs.15,000/- received as interim compensation, allowed Rs.2,01,000/- with interest at the rate of 12% per annum and apportioned the amount awarding Rs.91,000/- to the wife, Rs.20,000/- to the elder son, Rs.30,000/- to the next one and Rs.60,000/- to the youngest.

The award made by the Tribunal has been assailed in this appeal by the owner of the vehicle with the submissions that driver of the vehicle was not responsible for the accident in question and that the accident occurred due to the fault of

the oncoming unknown vehicle. The quantum of compensation has been assailed particularly with the submissions that the amount of Rs.16,320/- paid by the non-applicants and the amount of Rs.71,646/- of GPF ought to have been deducted in the compensation amount and the entire of the salary received by the wife of the deceased of Rs.689/- per month ought also to have been deducted. By way of cross-objections, the claimants have sought enhancement over the amount of compensation with the submissions that the award remains too low and inadequate where the learned Judge of the Tribunal has not considered the future prospects of promotion and increments and when nothing has been awarded towards non-pecuniary loss.

Having heard the learned counsel for the parties and having examined the entire record, this Court is satisfied that the appeal remains absolutely bereft of substance and deserves to be dismissed with costs while the award falling short of just compensation, deserves suitable modification by upward revision.

So far the liability towards accident is concerned, it is clearly established on record that even the roadworthiness of the ill-fated vehicle was itself in question as its load bearing spring had broken at Sikar. The driver of the vehicle had definitely been negligent in not being able to keep the vehicle

in its lane and to avoid collision with oncoming vehicle and had ran away from the site after the accident as is stated in the first information report (Ex.A/1) lodged by Sukhvinder Singh NAW-2. The driver of the vehicle has attempted to deny breaking down of the vehicle after starting from Jaipur contradicting even non-applicants' witness Sukhvinder Singh NAW-2 who has admitted that the vehicle developing snag on the way. Further more, the driver of the vehicle Baldeo Singh has alleged to have spotted from a distance of about 30 metres an oncoming tractor trolley that allegedly hit his vehicle. The Investigating Officer, NAW-6 Triloki Nath has admitted that the road in question was 'double road'. It is apparent that there was enough space available for the driver to have kept a safe margin with the oncoming traffic; and in the overall circumstances the finding on the negligence of the driver of the vehicle concerned cannot be said to be suffering from any perversity and calls for no interference. In any case, in the context of the deceased, even if it were assumed to be a case of composite negligence, the non-applicants nevertheless remain liable for compensation.

Coming to the question of quantum of compensation, the suggestion made by the appellants, the State and the Chief Engineer of Public Health Engineering Department for deducting from compensation the amount of Gratuity and

Provident Fund received by the claimants could only be rejected as preposterous, to say the least. Family pension, gratuity, provident fund etc. are not the amount payable on account of death and even if the victim had not died in the accident, his widow and children for whom he made the future provision, would have enjoyed the properties left by the deceased. The principle is what is to be deducted is the amount payable on account of death as distinguished from the amount payable at the time of death. Gratuity and GPF amount are nevertheless the property of the claimants and it sounds unjustified on the part of a tortfeasor to suggest such amount to be deducted from compensation recoverable from him. Of course, the component of the benefit derived on account of compassionate appointment of wife of the deceased could be reasonably accounted for but here again the appellants are not justified in suggesting that entire of the salary earned by the wife of the deceased be deducted while assessing the loss. The wife of the deceased is required to accept such compassionate appointment under the force of circumstances after compromising against the amenities of life otherwise enjoyed and the income is earned by putting her own labour into the job. A reasonable component of the benefit derived from compassionate appointment could only be taken into consideration and it cannot be suggested that

the entire earning out of compassionate appointment is required to be deducted. Learned Judge of the Tribunal has yet not restricted this deduction and out of the salary income of the Rs.689/- per month of the wife of the deceased, an amount of Rs.500/- per month has been deducted while assessing the loss of dependency. The appellants seem rather unjustified in seeking to assail the award in question that remains too restrictive in and too low on quantification of compensation. The appeal, therefore, deserves to be dismissed with quantified costs.

Taking up the cross-objections for enhancement of the amount of compensation, this Court is satisfied that the award in question remains inadequate and deserves suitable enhancement. The deceased was in a settled job as Reader in Engineering College with substantial high qualifications of M.E. and Ph.D. The deceased was 43 years in age and obviously had a bright future ahead and it would be unrealistic to assume even after accounting for all imponderables that his income and corresponding contribution to the claimants should be taken at the static figure of the income last drawn as such assessment on static figure of last drawn income would be falling short of a fair estimate of loss. AW-3 has pointed out that the deceased was the senior most Reader in his Department and would have become Professor within five

years and would have retired at the age of 60 years and even the retired professors are engaged on special assignments for five years. The learned Judge of the Tribunal has assumed the promotion to be a matter of uncertainty but has failed to take into consideration an equally reasonable certainty attached to the career prospects for the deceased. The learned Judge has further deducted Rs.500/- per month because of the salary income earned by the wife of the deceased due to compassionate appointment accorded to her; and such deduction too appears rather disproportionate to the benefits received by the claimants. However, other way round, in view of the family set up, the deduction on the personal expenditure of the deceased only at 25% seems equally improper and the same ought to have been made at least 33%. In this view of the matter, for the ultimate analysis, the multiplicand adopted by the Tribunal at Rs.18,000/- per annum is not disturbed but such multiplicand remains the minimum on the most conservative estimates and then, for the deceased in 43 years of age, there appears absolutely no justification for restricting the multiplier only at 12; and in the overall circumstances of the case the multiplier of 15 deserves to be applied to arrive at a reasonable figure of pecuniary loss. Therefore, the pecuniary loss assessed by the Tribunal at

Rs.2,16,000/- deserves to be revised to Rs.2,70,000/- (Rs. 18,000/- x 15).

The Tribunal has been entirely unjustified in denying a reasonable compensation towards non-pecuniary loss and even in denying funeral expenses on the consideration that the claimants had received substantial GPF & Gratuity amount. Such amount, as aforesaid, has nothing to do with loss occasioned to the claimants and in the matters of claim for compensation on account of accidental death, the component of non-pecuniary loss towards loss of consortium for the spouse and loss of love, affection and guidance for the children, deserve not to be denied altogether. Of course, such amount remains a token compensation in the context of the head it is granted; but cannot be said to be unwarranted in the scheme of awarding of just compensation to the hapless sufferers of the result of a fatal vehicular accident. A reasonable amount of Rs.25,000/- towards non-pecuniary loss with Rs.10,000/- for loss of consortium to the wife and Rs.5,000/- to each of the children for the loss of love, affection and guidance deserves to be allowed. A further amount in the sum of Rs.2,000/- deserves to be allowed towards funeral expenses.

The claimants are, therefore, entitled for compensation in the sum of Rs.2,97,000/- (Rs.2,70,000/- + Rs.25,000/- +

Rs.2,000/-) as against Rs.2,16,000/- allowed by the Tribunal. The award of compensation, therefore, deserves to be modified and a further compensation in the sum of Rs.81,000/- deserves to be allowed to the claimants. In the circumstances of the case, on the enhanced amount of award, the claimants deserve to be allowed interest at the rate of 7.5% per annum from the date of filing of claim application i.e. 24.08.1985.

As a result of the aforesaid, the appeal fails and is dismissed; the cross-objections are allowed in part and a further compensation in the sum of Rs.81,000/- is allowed to the claimants with interest at the rate of 7.5% per annum from the date of filing of claim application. The appellants shall also pay to the claimants costs quantified at Rs.4,000/-. The appellants shall deposit the amount payable under the modified award with costs within 30 days from today with the Tribunal that shall proceed with apportionment and disbursement in the same proportion and manner as contemplated under the impugned award.

(DINESH MAHESHWARI),J.

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